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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/608,131	06/30/2003	Wayne A. Wagner	3223.045	4946

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EXAMINER

BEACH, THOMAS A

ART UNIT PAPER NUMBER

3671

DATE MAILED: 10/05/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/608,131

Applicant(s)

WAGNER, WAYNE A.

Examiner

Thomas A. Beach

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-44 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-44 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 30 June 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 11/18/03.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_.

## **DETAILED ACTION**

### ***Claim Objections***

1. Claims 1-6, 10, and 21 are objected to because of the following informalities: on lines 9-10, "or other configuration" is vague and unclear since it does not set forth the meets and bounds of this limitation (open-ended in terms of any configuration). On line 1 of claims 2-6, 10 and 21 respectively, "1wherein" should be substituted with --1 wherein--. Appropriate correction is required.

### ***Drawings***

2. The drawings are objected to under 37 CFR 1.83(a) because they fail to show concave/convex connector surface, the core having a circular cross as described in the specification. Any structural detail that is essential for a proper understanding of the disclosed invention should be shown in the drawing. MPEP § 608.02(d). Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency.

Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1, 3, 4, 6, 7, 13, 14, 15, 17, 18, 20-22, 24-26, 28, 29, and 34-40 are rejected under 35 U.S.C. 102(b) as being anticipated by Newell 2,285,455. Newell shows an excavation tooth having a metallic core 14 having front and rear ends and at least one longitudinal surface extending between said ends, at least one projection formed from metallic stock and having a tip; said projection 12 (with convergence longitudinal edges of 25%, fig 4) being secured to the core at least in part by welding with the tip and at least a portion of the length of the projections extending beyond the front end of the core (non-circular); and in or on the core (fig. 3), at least one tooth connector portion 11 (at the rear of the core, male), including at least one concave or convex connector surface, of circular or other configuration, positioned and adapted to

engage with and non-destructively disengage from at least one mating surface of an excavator apparatus (figs. 3-4) with a locking member, the mounting pin 35.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Newell 2,285,455 in view of Bowes, Jr. 4,320,925. Newell does not show a circular cross section; however, Bowes shows a similar excavation tooth having a circular cross section. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Newell, as taught by Bose, since both circular and non-circular cross section work equally well, thus merely a design choice within ordinary skill in the art requiring routine experimentation.

7. Claims 8 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Newell 2,285,455 in view of Snyder et al 2,702,698. Newell does not show more than one projection welded to the core, however, Snyder shows similar excavating tooth having two or more projections (figs 5-33). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Newell, as taught by Snyder, to include more than one projection to improve the cutting and breaking ability of the tooth by having multiple points of contact with multiple projections.

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8. Claims 5, 9-12, 16, 19, 41, 43 and 44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Newell 2,285,455 alone. As concern claims 5, 9-12, 16, 19, 41, 43 and 44, Newell does not show specific dimension, hardness or materials. However, it would have been an obvious matter of design choice requiring routine skill in the art to modify the tooth to include the specific dimensions regarding the thickness of the stock material, the angles of the tip, the particular hardness of the material and the varying chemical components that create a specific hardness to improve the life of the tooth or fit a specific application of the tooth, since such a modification in dimensions, hardness and material is generally recognized as being within ordinary skill in the art because they do not solve any particularly stated problem and other dimensions, hardnesses and compounds would work equally well.

9. Claim 27 is rejected under 35 U.S.C. 103(a) as being unpatentable over Newell 2,285,455 in view of Cornelius et al 4,133,121. Newell does not show the rear connector to be a female member; however, Cornelius shows a similar excavation too having a rear female connector. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Newell, as taught by Cornelius, to include a female rear connector to improve the adaptability of the tooth to be connected to various implements with various coupling arrangements.

10. Claim 35 is rejected under 35 U.S.C. 103(a) as being unpatentable over Newell 2,285,455 in view of Launder et al 5,617,655. Newell shows the mounting pin 35 but not a resilient pin; however, Launder shows a similar excavation tooth having a resilient mounting pin. Therefore, it would have been obvious to one of ordinary skill in the art at

the time the invention was made to modify Newell, as taught by Launder, to include a resilient pin to improve the security of the pin within its connection to maintain the part in arrangement, thus reducing down time.

### ***Conclusion***

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thomas A. Beach whose telephone number is 571.272.6988. The examiner can normally be reached on Monday-Friday, 8:00am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas Will can be reached on 571.272.6998. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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Thomas A. Beach

September 28, 2005

**THOMAS A. BEACH**  
Patent Examiner  
Group 3600